

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Cox Communications Louisiana, LLC	)	CSR 6932-E, CSR 6933-E, CSR 6934-E,
	)	CSR 6935-E
Four Petitions for Determination of Effective	)	
Competition in Caddo Valley, Arkansas	)	
(AR0221), Lincoln Parish (LA0383), Calcasieu	)	
Parish (LA036, LA0475) and Acadia Parish,	)	
Louisiana (LA0168, LA0169)	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: February 27, 2007**

**Released: March 1, 2007**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Cox Communications Louisiana, LLC (“Cox”) has filed with the Commission four petitions for determinations of effective competition in the City of Caddo Valley, Arkansas and the unincorporated areas of Lincoln Parish, Calcasieu Parish and Acadia Parish, Louisiana (collectively “the Communities”) pursuant to Section 623(a)(2) of the Communications Act<sup>1</sup> and the Commission's implementing rules.<sup>2</sup> Cox alleges that its cable systems serving the captioned areas are subject to effective competition and, therefore, are exempt from cable rate regulation. Cox claims the presence of effective competition in these areas stems from the competing services provided by two unaffiliated direct broadcast satellite (“DBS”) providers, DirecTV, Inc. (“DirecTV”) and EchoStar Satellite, LLC (“EchoStar”).<sup>3</sup> No opposition to the petitions was filed. Finding that Cox is subject to effective competition in the listed Communities, we grant the petitions.

**II. DISCUSSION**

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>4</sup> as that term is defined by Section 623(l)(1) of the Communications Act<sup>5</sup> and Section 76.905 of the Commission's rules.<sup>6</sup> A cable operator bears the burden of rebutting the presumption that effective competition does not exist by producing evidence that shows effective

<sup>1</sup> 47 U.S.C. § 543(a)(2).

<sup>2</sup> 47 C.F.R. § 76.905(b)(2).

<sup>3</sup> Petitions at 2.

<sup>4</sup> 47 C.F.R. § 76.906.

<sup>5</sup> 47 U.S.C. § 543(l)(1).

<sup>6</sup> 47 C.F.R. § 76.905(b).

competition is present in the relevant franchise area.<sup>7</sup>

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD"), each of which offer comparable programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the franchise area.<sup>8</sup>

4. Turning to the first prong of this test, DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware that the service is available.<sup>9</sup> The two DBS providers' subscriber growth reached approximately 26.1 million as of June 2005, comprising approximately 27.7 percent of all MVPD subscribers nationwide; DirecTV has become the second largest, and EchoStar has become the third largest, MVPD provider.<sup>10</sup> Because the two DBS providers have a nationwide footprint and serve well over 20 percent of all MVPD subscribers nationwide, we believe these statistics support the presumption that Cox's franchise areas are within their satellite footprint. Additionally, Cox has provided evidence of DBS advertising in local, regional, and national media that serves the Communities.<sup>11</sup> We conclude that the population of the Communities may be deemed reasonably aware of the availability of DBS services for the purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the DBS providers' programming satisfies the Commission's program comparability criterion because DirecTV and EchoStar each offer more than 12 channels of video programming, including more than one non-broadcast channel.<sup>12</sup> We find further that Cox has demonstrated that the Communities are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the Communities. Therefore, the first prong of the competing provider test is satisfied.

5. The second prong of the competing provider test requires that the number of households subscribing to MVPDs other than the largest MVPD exceeds 15 percent of the households in a franchise area. Cox states, and we have no cause to doubt, that it is the largest MVPD in the four franchise areas where it claims to be subject to competing provider effective competition.<sup>13</sup> To make the numerical showing required by the second prong, Cox furnished the Commission with Effective Competition Tracking Reports from the Satellite Broadcasting and Communications Association.<sup>14</sup> Cox's franchise area in Caddo Valley is coextensive with the City's municipal boundaries, and Cox is franchised to serve all the unincorporated portions of Lincoln Parish. To determine the competitive penetration levels in those franchises, Cox used a five-digit zip code allocation methodology.<sup>15</sup> Cox's franchise boundaries in the unincorporated areas of Calcasieu Parish and Acadia Parish do not correspond to general Parish

<sup>7</sup> See 47 C.F.R. §§ 76.906 & 76.907(b).

<sup>8</sup> 47 U.S.C. § 543(l)(1)(B); see also 47 C.F.R. § 76.905(b)(2).

<sup>9</sup> See *MediaOne of Georgia*, 12 FCC Rcd 19,406 (1997).

<sup>10</sup> See *Twelfth Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, FCC 06-11, 21 FCC Rcd 2503 at ¶¶ 6, 13, 72-73 (rel. March 3, 2006).

<sup>11</sup> Petitions at 8 & Exhibits 3.

<sup>12</sup> 47 C.F.R. § 76.905(g); see also Petitions at 4 & Exhibits 1.

<sup>13</sup> Petitions at 14.

<sup>14</sup> Petitions at 8 & Exhibits 3.

<sup>15</sup> Petitions at 8 & n. 27(citing *Amzak Cable Midwest, Inc.*, 19 FCC Rcd 6208 at ¶ 6; *Charter Communications*, 19 FCC Rcd 6204 at ¶ 4; *Texas Cable Partners, L.P.*, 19 FCC Rcd 6213 at ¶ 7); Exhibits 4, 5 & 6.

boundaries or five-digit zip codes.<sup>16</sup> Cox applied an established zip code plus four methodology to accurately determine the penetration levels in these two franchises.<sup>17</sup> Although the Commission accepts zip code plus four data, it has not expressed a preference for one form of data over another and accepts five digit zip code data as reliable for purposes of determining effective competition.<sup>18</sup> Further, Cox has utilized established methodologies to demonstrate that effective competition exists in the four franchise areas under the 15 percent element of the competing provider test. Based upon the DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data, we find that Cox has demonstrated that the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the Communities listed in Attachment A. Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Cox has submitted sufficient evidence demonstrating that its cable systems serving the Communities set forth in Attachment A are subject to competing provider effective competition.

### III. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that the Petitions for Special Relief filed by Cox Communications Louisiana, LLC for a determination of effective competition in the City of Caddo Valley, Arkansas and the unincorporated areas of Lincoln Parish, Calcasieu Parish and Acadia Parish, Louisiana **ARE GRANTED**.

7. **IT IS FURTHER ORDERED** that the certifications to regulate the basic cable service of by Cox Communications Louisiana, LLC granted to any of the Communities **ARE REVOKED**.

8. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>19</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker  
Deputy Chief, Policy Division, Media Bureau

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<sup>16</sup> Petitions at 10.

<sup>17</sup> Petitions at 7 & n.24 (citing *Comcast of Maryland*, 19 FCC Rcd 7130 (MB 2004)); Exhibits 7 & 8.

<sup>18</sup> See *Charter Communications, Inc. on behalf of Falcon Cable Media, a California Limited Partnership; Charter Communications VI, LLC; and Interlink Communications Partners, LLC*, Petition for Determination of Effective Competition in Eight Virginia Communities, 19 FCC Rcd 6878 (MB 2004).

<sup>19</sup> 47 C.F.R. § 0.283.

## Attachment A

## Cox Southeast LLC

## Competing Provider Effective Competition

<b>CUIDS</b>	<b>Communities</b>	<b>CPR+</b>	<b>2000 Census Households*</b>	<b>DBS Subscribers*</b>
AR0221	Caddo Valley, AR	28.8%	242	69.8
LA0383	Lincoln Parish, LA	35.4%	5,436	1,925.7
LA0036	Calcasieu Parish, LA	20.2%	15,888	3,221
LA0475				
LA0168	Acadia Parish, LA	36.7%	2,956	1,085
LA0169				

\* = See Cable Operator Petitions

+ CPR = Percent DBS penetration